

AMENDED IN SENATE APRIL 13, 2009

**SENATE BILL**

**No. 791**

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**Introduced by Senator Yee**

February 27, 2009

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*An act to amend Section 12302.25 of the Welfare and Institutions Code, relating to public social services, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 791, as amended, Yee. In-home supportive services: *providers: county responsibilities.*

Existing law provides for the In-Home Supportive Services (IHSS) program, under which, either through employment by the recipient or by or through contract by the county, qualified, aged, blind, and disabled persons receive services enabling them to remain in their own homes. Counties are responsible for the administration of the IHSS program. *Existing law requires that each county act as, or establish, an employer for IHSS providers for certain purposes, in accordance with state and federal law, as specified.*

~~This bill would declare the intent of the Legislature to enact legislation that would improve the In-Home Supportive Services program~~ *add to the laws for which a county is required to act as, or establish an employer for IHSS providers, a specified federal law relating to premium assistance for benefits under the Consolidated Omnibus Budget Reconciliation Act. By expanding county duties in this regard, this bill would result in a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.*

*Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.*

*This bill would declare that it is to take effect immediately as an urgency statute.*

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 12302.25 of the Welfare and Institutions*  
2     *Code is amended to read:*  
3     12302.25. (a) On or before January 1, 2003, each county shall  
4     act as, or establish, an employer for in-home supportive service  
5     providers under Section 12302.2 for the purposes of Chapter 10  
6     (commencing with Section 3500) of Division 4 of Title 1 of the  
7     Government Code, *Title III of Division B of the federal Recovery*  
8     *and Reinvestment Act of 2009 (Public Law 111-5)*, and other  
9     applicable state or federal laws. Each county may utilize a public  
10    authority or nonprofit consortium as authorized under Section  
11    12301.6, the contract mode as authorized under Sections 12302  
12    and 12302.1, county administration of the individual provider  
13    mode as authorized under Sections 12302 and 12302.2 for purposes  
14    of acting as, or providing, an employer under Chapter 10  
15    (commencing with Section 3500) of Division 4 of Title 1 of the  
16    Government Code, county civil service personnel as authorized  
17    under Section 12302, or mixed modes of service authorized  
18    pursuant to this article and may establish regional agreements in  
19    establishing an employer for purposes of this subdivision for  
20    providers of in-home supportive services. Within 30 days of the  
21    effective date of this section, the department shall develop a  
22    timetable for implementation of this subdivision to ensure orderly  
23    compliance by counties. Recipients of in-home supportive services  
24    shall retain the right to choose the individuals that provide their  
25    care and to recruit, select, train, reject, or change any provider  
26    under the contract mode or to hire, fire, train, and supervise any  
27    provider under any other mode of service. Upon request of a

1 recipient, and in addition to a county's selected method of  
2 establishing an employer for in-home supportive service providers  
3 pursuant to this subdivision, counties with an IHSS caseload of  
4 more than 500 shall be required to offer an individual provider  
5 employer option.

6 (b) Nothing in this section shall prohibit any negotiations or  
7 agreement regarding collective bargaining or any wage and benefit  
8 enhancements.

9 (c) Nothing in this section shall be construed to affect the state's  
10 responsibility with respect to the state payroll system,  
11 unemployment insurance, or workers' compensation and other  
12 provisions of Section 12302.2 for providers of in-home supportive  
13 services.

14 (d) Prior to implementing subdivision (a), a county shall  
15 establish an advisory committee as required by Section 12301.3  
16 and solicit recommendations from the advisory committee on the  
17 preferred mode or modes of service to be utilized in the county  
18 for in-home supportive services.

19 (e) Each county shall take into account the advice and  
20 recommendations of the in-home supportive services advisory  
21 committee, as established pursuant to Section 12301.3, prior to  
22 making policy and funding decisions about the program on an  
23 ongoing basis.

24 (f) In implementing and administering this section, no county,  
25 public authority, nonprofit consortium, contractor, or a combination  
26 thereof, that delivers in-home supportive services shall reduce the  
27 hours of service for any recipient below the amount determined  
28 to be necessary under the uniform assessment guidelines  
29 established by the department.

30 (g) Any agreement between a county and an entity acting as an  
31 employer under subdivision (a) shall include a provision that  
32 requires that funds appropriated by the state for wage increases  
33 for in-home supportive services providers be used exclusively for  
34 that purpose. Counties or the state may undertake audits of the  
35 entities acting as employers under the terms of subdivision (a) to  
36 verify compliance with this subdivision.

37 (h) On or before January 15, 2003, each county shall provide  
38 the department with documentation that demonstrates compliance  
39 with the January 1, 2003, deadline specified in subdivision (a).

1 The documentation shall include, but is not limited to, any of the  
2 following:

3 (1) The public authority ordinance and employee relations  
4 procedures.

5 (2) The invitations to bid and requests for proposal for contract  
6 services for the contract mode.

7 (3) An invitation to bid and request for proposal for the operation  
8 of a nonprofit consortium.

9 (4) A county board of supervisors' resolution resolving that the  
10 county has chosen to act as the employer required by subdivision  
11 (a) either by utilizing county employees, as authorized by Section  
12 12302, to provide in-home supportive services or through county  
13 administration of individual providers.

14 (5) Any combination of the documentation required under  
15 paragraphs (1) to (4), inclusive, that reflects the decision of a  
16 county to provide mixed modes of service as authorized under  
17 subdivision (a).

18 (i) Any county that is unable to provide the documentation  
19 required by subdivision (h) by January 15, 2003, may provide, on  
20 or before that date, a written notice to the department that does all  
21 of the following:

22 (1) Explains the county's failure to provide the required  
23 documentation.

24 (2) Describes the county's plan for coming into compliance  
25 with the requirements of this section.

26 (3) Includes a timetable for the county to come into compliance  
27 with this section, but in no case shall the timetable extend beyond  
28 March 31, 2003.

29 (j) Any county that fails to provide the documentation required  
30 by subdivision (h) and also fails to provide the written notice as  
31 allowed under subdivision (i), shall be deemed by operation of  
32 law to be the employer of IHSS individual providers for purposes  
33 of Chapter 10 (commencing with Section 3500) of Division 4 of  
34 Title 1 of the Government Code as of January 15, 2003.

35 (k) Any county that provides a written notice as allowed under  
36 subdivision (i), but fails to provide the documentation required  
37 under subdivision (h) by March 31, 2003, shall be deemed by  
38 operation of law to be the employer of IHSS individual providers  
39 for purposes of Chapter 10 (commencing with Section 3500) of  
40 Division 4 of Title 1 of the Government Code as of April 1, 2003.

(l) Any county deemed by operation of law, pursuant to subdivision (j) or (k), to be the employer of IHSS individual providers for purposes of Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code shall continue to act in that capacity until the county notifies the department that it has established another employer as permitted by this section, and has provided the department with the documentation required under subdivision (h) demonstrating the change.

(m) Section 10605 may be applied in each county that has not complied with this section by January 1, 2003.

*SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.*

*SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:*

*In order to access federal funding at the earliest possible time, it is necessary for this act to take effect immediately.*

~~SECTION 1. It is the intent of the Legislature to enact legislation that would improve the In-Home Supportive Services program.~~